

REMARKS

Claims 1-6, 14-15 and 18 have been amended. Claims 1-8 and 14-19 are currently pending. Claims 9-13 have been withdrawn from further consideration. New claims 20-23 are presented and are currently pending. Claims 20 and 21 are supported by original claim 3. Claim 22 is supported by original claim 3. Claim 23 is supported by original claim 15. No new matter is introduced by this Response. Reconsideration of the application in view of the current claims is respectfully requested and further in view of the following Remarks.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-8 and 14-19 under 35 U.S.C. §102(b) as allegedly being anticipated by Lappe et al (U.S. Pat. No. 6,342,183). The Examiner asserts that:

“Lappe discloses a device for collecting and locally analyzing a fluid specimen that comprises a container 24 that receives a fluid specimen, a plunger 70 movably position within the container, a fluid segregation chamber 86 where the fluid is transferred to the test strips, a fluid flow lumen 80 that provides passageway for at least a portion of the fluid to flow into the segregation chamber 86 (figure 7). The fluid flow lumen has a first opening 82 which is located in the base of the container 24 and an upper opening 83 which outlets the fluid into the segregation chamber 86. Regarding the seal member that covers the first opening or the second opening to prevent fluid from flowing there through, the Examiner maintains that the pressure differential created when the cap is provided on the container 24 creates a air seal that maintains the in the lower portion of the container 24 until a pressure is exerted on the fluid to pass into passageway 80.” (See, Office Action dated September 10, 2007, pp. 2-3).

Applicants respectfully traverse this rejection because the cited art reference does not teach each and every element of the claimed subject matter.

The device disclosed in Lappe et al. is structurally and operatively distinct from the claimed device. First, the Lappe device does not have a seal member as specified in claim 1. In particular, claim 1 requires “a seal member that covers the first opening or the second opening wherein the seal member prevents fluid from entering the fluid segregation chamber until the seal member is broken.” Fluid does not automatically enter the segregation chamber once the cap is placed on the container. Second, the cited device in Lappe also does not have a seal

member as specified in claim 14. Claim 14 recites that the “seal member prevents fluid from moving into the fluid segregation chamber until the seal is broken.”

The cited device in Lappe contains “a cap 26” and not a breakable seal member. The cap in Lappe “is installed on the cup 24...the lower ends of the wall 76 essentially define partitions 98A, 98B which bridge the walls 92A, 92B to form a closed chamber 100 for isolating a portion of the fluid specimen” (Col. 6, line 10).

In addition, the Lappe device operates differently from the claimed device. In Lappe, “as the plunger 106 is depressed into the chamber 100, the fluid therein is displaced upwardly via inlet 82 through passageway 80” (column 6, lines 30-32). However, the device defined in the pending claims requires a seal that can be broken so as to allow fluid specimen flowing into the segregation chamber. Claim 1 as amended requires that “a seal member that covers the first opening or the second opening, wherein the seal member prevents fluid from entering the fluid segregation chamber until the seal member is broken”; wherein the plunger is configured to move from the first position toward the second position upon insertion of a test element to break the seal member and further cause at least a portion of the fluid specimen to flow through the second opening into the fluid flow lumen and out of the first opening into the fluid segregation chamber.”

Given the entire different mechanism by which the cited Lappe device operates, it is not surprising that Lappe does not teach or even suggest a seal member as instantly claimed. As such, Lappe does not anticipate each and every element of independent claims 1 and 14; nor does it render the claimed subject matter obvious. Because claims 1 and 14 are patentable in view of Lappe, so are all dependent claims which recite additional features. Withdrawal of the rejection is respectfully requested.

CONCLUSION

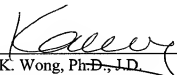
Applicant submits that this paper fully addresses the Final Office Action mailed September 10, 2007. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned attorney at (650) 849-3383. The Commissioner is authorized to charge any fees required for this submission, including the 3-month extension fee in the amount of \$1,050.00 to Deposit Account No. 23-2415 (Docket No. 32209-728.201). Should there be any other fees required for this submission,

Respectfully submitted,

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Date: _____

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